by securing mature and efficient employees for the discharge of the dangerous and difficult duties pertaining to a common carrier of passengers and freight. It would be a hard measure of justice to hold a company responsible on the one hand for failure to prescribe rules, and on the other to refuse to protect it from the consequences of the violation of reasonable and proper rules adopted and promulgated in the discharge of the duty imposed by law.

There is neither averment nor proof that the injury was inflicted recklessly, wantonly, or willfully. We are therefore of opinion that it was error to give the instructions asked for by defendant in error, and to refuse to give those asked for by plaintiff in error.

The point is made by defendant in error that there is no proper assignment of errors in the petition in this case. As we have seen, instructions were asked for on the part of the plaintiff and defendant, all of which are covered by plaintiff in error's bills of exceptions, and, while it is not specifically stated in the petition that the ruling of the court upon this point or upon that is assigned as error, the points upon which reliance is had to secure a reversal are clearly stated, and can leave no doubt as to the questions presented for our consideration.

Upon the whole case, we are of opinion that the judgment of the circuit court should be reversed, and a new trial awarded.

Reversed.

CHESAPEAKE & O. RY. CO. *v.* FORTUNE.

Nov. 21, 1907.

[59 S. E. 1095.]

1. Carriers—Injuries—Persons Accompanying Passengers—Duty of Carrier.—Where plaintiff went to defendant's station to accompany his wife and children, who intended to become passengers on defendant's train, and plaintiff was injured by the premature starting of the train while he was endeavoring to place his wife's baggage aboard, plaintiff was on defendant's premises by its implied invitation, and defendant was therefore bound to exercise ordinary care for his safety.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 9, Carriers, § 1242.]

2. Same—Evidence.—Plaintiff, having been injured while on a carrier's premises to assist his wife and children to board a train, being entitled to assume that the carrier would stop a reasonable length of time to enable passengers and baggage to be put aboard, it was not error to permit him to testify that when he attempted to put the baggage aboard, as the train was standing, he believed it would remain so until his wife could get in the car and until he could get the baggage on.

3. Witnesses—Character Evidence—Admissibility.—Where defendant's cross-examination of plaintiff was such as to question his truthfulness indirectly, evidence to support his reputation for truth and veracity was admissible.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 50, Witnesses, § 1167.]

4. Damages—Personal Injuries—Excessiveness.—Where plaintiff, a man of good health and character, in the prime of life, suffered the loss of a leg by defendant's negligence, a verdict allowing him $5,500 was not excessive, under the rule that a verdict will not be disturbed unless the damages are so excessive as to warrant the belief that the jury must have been influenced by partiality or prejudice, or misled by a mistaken view of the merits of the case.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 15, Damages, §§ 372-395.]

5. Trial—Instructions—Requests—Instructions Already Given.—Refusal of proper instructions is harmless, where the charge given fully covered the case.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 46, Trial, §§ 651-659.]

Error to Circuit Court, Alleghany County.

Action by R. L. Fortune against the Chesapeake & Ohio Railway Company. From a judgment for plaintiff, defendant brings error. Affirmed.

R. L. Parish, for plaintiff in error.

Jno. T. Delaney and *George A. Revercomb*, for defendant in error.

KEITH, P. R. L. Fortune brought suit in the circuit court of Alleghany county to recover damages for the loss of his leg, occasioned, as he alleges, by the negligent conduct of the Chesapeake & Ohio Railway Company. There was a verdict and judgment in his favor for $5,500, to which the railroad company obtained a writ of error.

The first assignment of error is that the court overruled the demurrer to the declaration.

There were five counts in the declaration, which state the plaintiff's case in a manner somewhat varying as to details; but the cause of action is set forth substantially as follows: That Fortune accompanied his wife and two small children, aged, respectively, two and four years, to "Mallow," a station on the Chesapeake & Ohio Railway, his wife and children intending to take train No. 14; that the station is what is known as a flag station, at which there is no depot, ticket office, baggage office, platform, portable step, or any other means or appliance to facilitate

ingress and egress to and from the trains that stop at that station; that the train stopped at a point where the public road crosses the railroad track, so that a passenger could step from the road upon the steps leading to the platform of the coach appropriated to colored people, or upon that appropriated to white passengers, which was the last coach in the train; that after his wife and two children had been assisted to the platform of the coach for colored people they passed across the platform to the rear coach, in which they were to be accommodated, and defendant in error, who had in his charge a valise or telescope belonging to his wife, and while the train was still at rest, undertook to put the valise or telescope upon the platform, so that his wife could take it with her; but while so engaged, and in a position perfectly open and obvious to the train crew, the train was put in motion, he was carried along with it, and received the injury for which he sues.

The theory of defendant in error (plaintiff in the court below) is that, having accompanied his wife and children, who intended to become passengers on the Chesapeake & Ohio Railway, to the station, he was there by invitation, and that it was the duty of the railroad company to use reasonable and ordinary care not to do him an injury.

The theory of plaintiff in error is that Fortune was at most a mere licensee, to whom the railroad company owed no duty, except that it should not injure him wilfully or recklessly.

We are of opinion that the position of plaintiff in error cannot be maintained. We think it plain that one who accompanies his wife and small children to a station where they expect to take a train and become passengers is there by the implied invitation of the railroad company; that it is the duty of a person upon the premises of a railroad company for such a purpose to exercise reasonable precaution for his own safety, and proceed with reasonable diligence to discharge the duty in which he is engaged; and that, while upon the premises under such conditions, it is the duty of the railroad company to exercise ordinary care for his safety and protection. This proposition seems to us too plain to need either argument to enforce it or authority to maintain it.

Without discussing the numerous cases cited, we shall content ourselves with an extract from 5 Am. & Eng. Enc. of Law (2d Ed.) 518: "Persons going upon a carrier's premises, or entering a carrier's vehicle, to assist a passenger, to greet an arriving passenger, or to take leave of a departing passenger, cannot be deemed passengers themselves. Nor are they trespassers, properly speaking. They should be considered rather in the light of licensees, to whom the carrier owes certain duties."

And in Fetter on Carriers of Passengers, § 237, it is said: "One who escorts a passenger to a station or to a seat in a train is not a mere trespasser, to whom the company owes no duty except to

abstain from willful injuries; nor, on the other hand, is he a passenger towards whom the company is bound to the exercise of the highest degree of care and skill; but he is on the company's premises on its implied invitation, and it is bound to exercise ordinary care for his safety."

The second error assigned is to the action of the trial court in permitting the attorney for defendant in error to ask the following question: "When you attempted to put the baggage on the train was standing still. Did you believe the train would remain standing still until your wife could get in the car where she had to go, and until you could get the baggage on? A. That is what I expected."

The objection taken to this ruling is that Fortune showed by his own testimony that he had never been to Mallow Station but once before, that he was unfamiliar with the surroundings, and he did not know what time trains usually stopped at Mallow, and had no right to presume that they would stop any given length of time. All of which is, perhaps, true; but it still remains that it was the duty of the company to stop a reasonable length of time to enable passengers and baggage to be put upon the train, and Fortune had a right to suppose that the railroad company would discharge that duty.

The third assignment of error is to the action of the court in admitting character evidence as to R. L. Fortune's general reputation for truth and veracity, when his reputation for truth and veracity had not been assailed, and the proof of such reputation by persons who were not sufficiently acquainted therewith.

The examination of Fortune was such as to bring the case within the influence of George *v.* Pilcher, 28 Grat. 299, 26 Am. Rep. 350, where this court said: "Whenever the character of a witness for truth is attacked, either by direct evidence of want of truth, or by cross-examination, or by proof of contradictory statements in regard to material facts, or by disproving by other witnesses material facts stated by him, or, in general, whenever his character for truth is impeached in any way known to the law, the party calling him may sustain him by evidence of his general reputation for truth."

The fourth assignment of error is that the verdict is excessive and that it is contrary to the law and the evidence.

Fortune was a man of good character, good health, in the prime of life, and he suffered the loss of a leg. This court has said in numerous cases that, there being no exact standard by which it is possible to ascertain in money the value of various elements of damage proper for the consideration of a jury in such a case, this court would not disturb the finding of a jury, unless the damages were so excessive as to furnish evidence of partiality or prejudice, or some corrupt motive, on the part of the jury.

We shall refer only to one case. In Farish & Co. *v.* Reigle, 11 Grat. 697, 62 Am. Dec. 666, there was a verdict and judgment for the plaintiff for $9,000. In that case the plaintiff was injured by the overturning of a stagecoach. His head was severely cut, and one of his legs was broken above the ankle, and at the time of the trial, which occurred about one year after the accident, his leg was not entirely healed and was shortened, the ankle joint was swollen and stiff, and he was obliged to use crutches. The attending physician expressed the opinion that he would be a cripple for life. The court held that the verdict in such a case could not be disturbed, unless the damages allowed were so excessive as to warrant the belief that the jury must have been influenced by partiality or prejudice, or misled by some mistaken view of the merits of the case.

The fifth assignment of error is to the giving of instructions asked for by the plaintiff, and the refusal to give instructions Nos. 2 and 3, asked for by the defendant.

Without going into a particular discussion of the instructions, we are of opinion that there is no error in the instructions given; that they fully covered the case, and were sufficient to enable the jury correctly to apply the evidence; and that, even though defendant's instructions were in themselves free from objection (about which we express no opinion), the refusal to give them was, under such circumstances, harmless error.

With respect to the evidence, we find that it was ample to support the averments of the declaration; and upon the whole case we are of opinion that there was no error to the prejudice of the plaintiff in error, and the judgment is affirmed.

Affirmed.

Note.

See extensive note to Chesapeake & O. Ry. Co. *v.* Paris' Adm'r, Va. Law Reg. February 1908, p. 786.

WHITE *v.* COMMONWEALTH.

Jan. 16, 1907.

[59 S. E. 1101.]

1. Indictment and Information—Language of Statute.—On a prosecution for unlawfully selling liquor in the county of Mathews, contrary to Acts 1901-02, p. 765, c. 653, an indictment charging the offense in the terms of the statute was sufficient.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 27, Indictment and Information, §§ 289-294.]